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“Double patenting results when the right to exclude granted by a first patent is unjustly extended by the grant of a later issued patent or patents.” *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982).” (Emphasis added) (See also MPEP 804.)

MPEP 804, I states that

“A. Between Issued Patent and One or More Applications

Double patenting may exist between an issued patent and an application filed by the same inventive entity, or by an inventive entity having a common inventor with the patent, and/or by the owner of the patent. Since the inventor/patent owner has already secured the issuance of a first patent, **the examiner must determine whether the grant of a second patent would give rise to an unjustified extension of the rights granted in the first patent.**” (Emphasis added)

Here, the filing date of the present application is 21 February 2001, and the filing date of U.S. Patent No. 6,584,374 is March 14, 2001. The term of the ‘374 patent is extended or adjusted under 35 U.S.C. 154(b) by 265 days. Accordingly, unless the term of the present application is extended or adjusted by more than 286 days (=265+21), there is no unjustified extension of the rights granted in U.S. Patent No. 6,584,374.

In view of the prosecution history of the present application, it is not believed that there will

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be such an extension so that double patenting may exist. In the even that the examiner believes that double patenting exists for any reason, the clarification of the examiner's reasoning for double patenting is respectfully requested.

No fee is incurred by this Response. However, should any fees be incurred, the Commissioner is authorized to charge Deposit Account No. 02-4943 of Applicant's undersigned attorney in the amount of such fees.

Respectfully submitted,

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